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BY ELECTRONIC MAIL (BLM_UT_O&G_Leasing_Comments@blm.gov)

July 23, 2012

Mr. Don Ogaard
Bureau of Land Management
PO Box 45155
Salt Lake City, Utah 84145-0155

Re: November 2012 Oil and Gas Lease Sale

Greetings:

The Southern Utah Wilderness Alliance (SUWA) appreciates the opportunity to submit comments on the Bureau of Land Management's proposed November 2012 oil and gas lease sale and the analysis found in the Vernal Field Office's November 2012 Oil and Gas Lease Sale, Environmental Assessment DOI-BLM-UT-G010-2012-174-EA (June 2012) (Vernal EA), and the November 2012 Price Field Office Oil and Gas Lease Sale, Environmental Assessment DOI-BLM-UT-G021-2012-0048-EA (June 2012) (Price EA).

SUWA finds the possible leasing of the following parcels particularly troubling: UT1112-13, UT1112-16, UT1112-19, and UT1112-20 in the Price Field Office and UT1112-15, UT1112-25, and UT1112-42 in the Vernal Field Office. These parcels should all be withdrawn from the proposed November lease sale for the reasons discussed below.

BLM Must Conduct Environmental Analysis at the Leasing Stage

It is important to note that the BLM must conduct environmental analysis at the leasing stage while it still retains full discretion regarding its management decisions. In the case of air quality impacts and impacts to other resources, the BLM appears to be pushing that analysis off to some other day. This is prohibited by the National Environmental Policy Act (NEPA).

"BLM regulations, the courts and [Interior Board of Land Appeals] precedent proceed under the notion that the issuance of a lease without [a no surface occupancy (NSO)] stipulation conveys to the lessee an interest and a right so secure that full NEPA review must be conducted prior to the decision to lease." *Southern Utah Wilderness Alliance*, 159 IBLA 220, 240-43 (2003) (citing *Friends of the Southeast's Future v. Morrison*, 153 F.3d 1059, 1063 (9th Cir. 1998); *see also Pennaco Energy, Inc.*, 377 F.3d at 1159-61; *Union Oil Co.*, 102 IBLA 187, 189 (1988); *Conner v. Burford*, 848 F.2d 1441, 1448-51 (9th Cir. 1988) (holding that the selling of leases containing "no surface occupancy" stipulations did not require preparation of an [environmental impact

statement (EIS)], but that an EIS was required before the selling of leases without "no surface occupancy" stipulations); *Sierra Club v. Peterson*, 717 F.2d 1409, 1414 (D.C. Cir. 1983) (same for the D.C. Circuit). An oil and gas lease that does not prohibit all surface use constitutes an "irreversible and irretrievable commitment of resources." *Peterson*, 717 F.2d at 1414 (quoting *Mobil Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2d Cir. 1977)).

At the leasing stage, BLM makes an "irrevocable commitment" to allow construction of roads, well pads, and pipelines. *Peterson*, 717 F.2d at 1414-15. BLM regulations provide that unless otherwise stipulated in the lease, "[a] lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold." 43 C.F.R. § 3101.1-2. Accordingly, once the lease is issued, BLM no longer has the authority to prevent some level of development. *Peterson*, 717 F.2d at 1415; *see also Connor v. Burford*, 848 F.2d 1441, 1451 (9th Cir. 1988) ("In sum, the sale of a[n] oil and gas lease [that does not prohibit surface use] constitutes the 'point of commitment;' after the lease is sold the government no longer has the ability to prohibit potentially significant inroads on the environment."). Because the issuance of the proposed November 2012 leases is the point of commitment, BLM must fully consider the environmental impacts of the leases—including air pollution—*before* issuing them.

BLM has failed to do so in this case. BLM's assertion that its issuance of these seven leases does not constitute the authorization of any specific development or impacts is incorrect. *See, e.g.*, Vernal EA at 19, 22 (stating that leasing would not impact air quality or sensitive species but overlooking potential impacts that could flow from the development of leases). None of the seven leases completely prohibits surface occupancy. *See* Vernal EA at App. A; Price EA at App. A. As discussed *supra*, the issuance of a lease is a promise to allow some future development. Therefore, the BLM must undertake its environmental analysis before issuing a lease because certain impacts—the promised development—may flow from that transaction and the BLM must consider those impacts while it still retains full discretion regarding whether or not to permit development and how that development should take place. *See Pennaco Energy, Inc.*, 377 F.3d at 1159. BLM itself concedes that it must conduct a NEPA analysis of the reasonably foreseeable impacts of leasing. *See, e.g.*, Vernal EA. Thus, whether the issuance of these leases constituted some specific authorization is immaterial; the issuance of these leases promised some level of development and therefore the BLM is required to prepare adequate NEPA analysis before it issues the leases, something it has not done here.

Particulate Matter and Ozone Pollution Are Serious Problems in the Uinta Basin

Monitors in the Uinta Basin reveal that ozone and fine particulate pollution concentrations have now reached levels in excess of federal air quality standards, something that neither the Vernal nor Price resource management plans (RMPs) ever considered and something that the Vernal EA and Price EA only acknowledge in passing.

Congress has tasked the Environmental Protection Agency (EPA) with developing national ambient air quality standards (NAAQS) for certain pollutants because they have significant effects on public health. *See, e.g.*, 42 U.S.C. §§ 7408, 7409; 40 C.F.R. §§ 50.4 – 50.17. Exposure to one of these NAAQS pollutants—ozone—can can lead to adverse health effects in humans ranging from

decreased lung function to possible cardiovascular-related mortality and respiratory morbidity. *See, e.g.*, 73 Fed. Reg. 16,436, 16,436 (Mar. 27, 2008). Ozone pollution also contributes to plant and ecosystem damage. *See, e.g.*, 72 Fed. Reg. 37,817, 37,883-95 (July 11, 2007). It damages trees and other plants thereby affecting landscapes in national parks, among other places.[1] Particulate matter pollution is also regulated by the Clean Air Act's NAAQS program; EPA differentiates these particulates by size, referring to fine particulates as "$PM_{2.5}$" and coarser particulates as "PM_{10}."[2] *See* 40 C.F.R. §§ 50.6, 50.7. Both short-term and long-term exposure to fine particles can lead to premature mortality, increased hospital admissions, and chronic respiratory disease. *See* 71 Fed. Reg. 2620, 2627-28 (Jan. 17, 2006). These particles also create regional haze, thereby impairing visibility. *See* Vernal RMP at 4-24 to -25.

Ozone values in the Uinta Basin—the area of these six contested leases—have recently been recorded well in excess of federal air quality standards. *See* Vernal EA at 10; Price EA at § 3.3.1. In the winter of 2010, two monitors in the Uinta Basin recorded forty days between January and early March where ozone in the region exceeded federal air quality standards. EPA, AirExplorer, Query Concentrations (Ozone, Uintah County, 2010), http://www.epa.gov/cgi-bin/broker?msaorcountyName=&msaorcountyValue=&poll=44201&county=49047&site=-1&msa=-1&state=-1&sy=2010&flag=Y&query=view&_debug=2&_service=data&_program=dataprog.query_daily3P_dm.sas (last visited July 14, 2011) (attached) (containing monitoring data from the Uinta Basin for 2010). The fourth-highest value recorded during that time for the Uinta Basin was 117 parts per billion, or ppb. *See id.*; *see also* EPA, AirData, Monitor Values Report (1 - Ozone, 2 – 2010, 3 - Utah), http://www.epa.gov/airdata/ad_rep_mon.html (last visited July 23, 2012) (containing high value monitoring data from the Red Wash and Ouray monitors in the Uinta Basin for 2010). The following winter, these monitors recorded similar, elevated levels of ozone. The fourth-highest value recorded at any monitor was 116 ppb in February 2011 in the Uinta Basin and twenty-four days recorded values above NAAQS between January and March. EPA, AirExplorer, Query Concentrations (Ozone, Uintah County, 2011), http://www.epa.gov/cgi-bin/htmSQL/mxplorer/query_daily.hsql?msaorcountyName=countycode&msaorcountyValue=49047&poll=44201&county=49047&site=-1&msa=-1&state=-1&sy=2011&flag=Y&query=download&_debug=2&_service=data&_program=dataprog.query_daily3P_dm.sas (last visited July 13, 2011) (attached). The highest day of ozone pollution in the Uinta Basin in 2011 saw levels reach 139 ppb. *Id.* The ozone NAAQS, the federal air quality standard, is 75 ppb. 40 C.F.R. § 50.15. Ozone levels in the Uinta Basin are among the worst in nation, comparable with Los Angeles County, California.[3]

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[1] *See* EPA, Ozone – Good Up High, Bad Nearby (Sept. 3, 2009) http://www.epa.gov/oar/oaqps/gooduphigh/bad.html.

[2] The numbers refer to particles 2.5 and 10 microns in diameter or smaller, respectively.

[3] For comparison, Pinedale, Wyoming—often cited as the location of some of the worst wintertime ozone in the United States—averaged ozone concentrations of 75 parts per billion (ppb) from 2008 through 2010. EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010). The Uinta Basin's average for 2010 and 2011—if no higher values are recorded—will be 116.5 ppb (based on the NAAQS-created measurement of the fourth highest value averaged over the two years). *See supra.* According to the American Lung Association, the three most polluted counties

Like ozone, $PM_{2.5}$ monitors have also recorded levels of fine particulates in the Uinta Basin well in excess of federal air quality standards. *See* Vernal EA at 11; Price EA at § 3.3.1. The Utah Division of Air Quality (DAQ) operated a $PM_{2.5}$ monitor in Vernal from approximately December 2006 to December 2007 which showed that $PM_{2.5}$ concentrations in the Uinta Basin often significantly exceed NAAQS. *See* Utah Division of Air Quality, PM2.5 Actual Concentration (24-hr average) in Micrograms per Cubic Meter, 2007 January and 2007 February (Vernal data found under "VL") (attached). In 2007, $PM_{2.5}$ in Vernal reached concentrations as high as 63.3 micrograms per cubic meter ($\mu g/m^3$). *Id.* The NAAQS for $PM_{2.5}$ is 35 $\mu g/m^3$. 40 C.F.R. § 50.13.[4] In 2008, DAQ operated a monitor in Vernal, Utah briefly during February and March and recorded one exceedance of the NAAQS for $PM_{2.5}$. Letter from Stephen S. Tuber, Environmental Protection Agency, to David Garbett, SUWA 2 (Sep. 3, 2009) (attached). In 2009, monitors in the area recorded further exceedances of NAAQS. From a small period, spanning January 21 to March 5, an EPA-funded Vernal $PM_{2.5}$ monitor operated by the State of Utah recorded four exceedances. *Id.* During that same period a $PM_{2.5}$ monitor in Roosevelt, a town in the Uinta Basin, recorded three exceedances of the 24-hour maximum average value for $PM_{2.5}$. *Id.* The high concentration observed in Vernal was 60.9 $\mu g/m^3$, well in excess of NAAQS. *See id.* These values show that current maximum concentrations of $PM_{2.5}$ in the Uinta Basin—somewhere in the range of 63.3 $\mu g/m^3$ or 60.9 $\mu g/m^3$—are at a level detrimental to human health and the environment.

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for ozone in the United States are San Bernardino, Riverside, and Kern, all in California; the most polluted city is Los Angeles. American Lung Association, State of the Air 2011, http://www.stateoftheair.org/2011/assets/SOTA2011.pdf. Los Angeles County, from 2007 to 2009, has averaged an ozone concentration of 108 ppb (and only 59 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010). San Bernardino County, from 2007 to 2009, has averaged an ozone concentration of 118 ppb (and only 67 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010). Riverside County, from 2007 to 2009, has averaged an ozone concentration of 106 ppb (and only 68 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010). Kern County, from 2007 to 2009, has averaged an ozone concentration of 105 ppb (and only 66 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010). These wintertime ozone levels in Uinta Basin suggest that the area may have some of the worst ozone levels of any location in the country.

[4]This standard refers to the maximum 24-hour average for fine particulates.

Oil and Gas Development Adversely Effects Air Pollution in the Uinta Basin

The Vernal EA and Price EA acknowledge that oil and gas development has likely caused exceedances of federal air quality standards for ozone and $PM_{2.5}$ in the Uinta Basin. Price EA at § 3.3.1; Vernal EA at 10-11.

Oil and gas development results in emissions of numerous pollutants that are regulated under the Clean Air Act, including ozone and particulate matter, in levels significant enough to impact air quality. Air emissions associated with oil and gas development begin at the surface disturbing stage and continue through full development. *See, e.g.*, Vernal RMP at 4-15 to -33 (discussing projected emissions from oil and gas development and disclosing that such activity "would emit pollutants during operation (i.e., well operations, compressor engines, etc.)" as well as pollutants during construction). Not only are air pollutants associated with oil and gas development harmful to human health, they also destroy vegetation and create haze that mars scenic vistas. *See, e.g.*, Vernal RMP at 4-16 to -18, -24 to -25 (discussing cancer risk of exposure to hazardous pollutants generated by oil and gas development as well as haze that forms from particulates and gases); 71 Fed. Reg. at 2,627-28 (discussing health effects of exposure to particulates; 73 Fed. Reg. at 16,436 (discussing impacts of ozone on human health and vegetation).

Two of the biggest air quality problems associated with oil and gas development are ground-level ozone and $PM_{2.5}$. Ground-level ozone is formed from precursor emissions—volatile organic compounds (VOCs) and nitrogen oxides (NO_X)—and its concentrations are affected by temperature, sunlight, wind, and other weather factors. *See* 73 Fed. Reg. at 16,437. These precursor emissions originate from a wide variety of sources, both mobile and stationary. *Id.* During oil and gas development, ozone precursors and $PM_{2.5}$ pollution are emitted from construction and maintenance vehicles, glycol dehydrators, compressors, and the flaring of gas, among other activities. *See, e.g.*, Moab Field Office, Proposed Resource Management Plan and Final Environmental Impact Statement 4-16 to -20, 4-27 to -28 (August 2008) (excerpts attached).

Numerous BLM oil and gas projects from the Vernal Field Office make clear that oil and gas development results in measurable and substantial quantities of ozone precursors—VOCs and NO_X—as well as $PM_{2.5}$. A small, nine-well project in the Vernal Field Office recently predicted development emissions that would produce 24.1 tons per year (tons/yr) of NO_X, 3.33 tons/yr of VOCs, and 10.7 tons/yr of $PM_{2.5}$. *See* Tumbleweed II Exploratory Natural Gas Drilling Project, Final Environmental Assessment and Biological Assessment 71 (June 2010) (excerpts attached). A larger, 100-well-per-year project predicted development emissions that would produce 1,298 tons/yr of NO_X, 103 tons/yr of VOCs, and 433 tons/yr of $PM_{2.5}$. *See* Gasco Energy Inc. Uinta Basin Natural Gas Development Project, Draft Environmental Impact Statement 2-15, 4-7 (October 2010) (excerpts attached). The pollution emissions of oil and gas projects are measurable; this evidence repudiates the Vernal and Price EAs' unsubstantiated claims to the contrary that quantitative analysis or additional analysis of these contributions would not be helpful at this point. *See* Price EA at § 4.3.1.1; Vernal EA at 19-22.

Not only are oil and gas development and production emissions measurable and quantifiable, they are—at the very least—sufficient to exacerbate poor air quality in the Uinta Basin. BLM's

claims to the contrary in the Vernal EA and Price EA lack evidence or support and are contradicted by analyses the BLM itself has done on other occasions, as well as the Price and Vernal EAs themselves. *See* Price EA at § 4.3.1.1; Vernal EA at 19-22. BLM must support its claims with adequate evidence in these EAs. *Cf., e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto.*, 463 U.S. 29, 43 (1983). It has not done that here.

The Environmental Protection Agency (EPA) has notified BLM of its concerns that elevated ozone levels in the Vernal Field Office are likely to increase due to current oil and gas development. *See* Letter from Larry Svoboda, EPA, to Selma Sierra, BLM Vernal Field Office 2 (Sept. 23, 2008) (attached). Modeling and analysis conducted by the BLM confirms this. The Vernal EA and Price EA acknowledge that oil and gas development is responsible for the elevated levels of ozone in the Uinta Basin. *See* Price EA at § 3.3.1; Vernal EA at 10-11. A recent environmental analysis released by the BLM also acknowledged that oil and gas development was likely responsible for elevated ozone levels in the Uinta Basin. *See* Gasco Uinta Basin Project at 3-13. That same analysis also predicted that a development in the Uinta Basin would increase ozone pollution incrementally by 1.3 ppb, even with numerous mitigation measures. Letter from James B. Martin, EPA, to Juan Palma, BLM 3 (Jan. 7, 2011) (attached). According to the EPA, this increase is "considered a *significant* project-specific contribution given the recent ozone monitored exceedances in the Uinta Basin." *Id.* (emphasis added). Understandably so, the Uinta Basin is already experiencing levels of ozone pollution well above federal air standards and any contribution to that only further exacerbates poor air quality.

The EPA also notified the BLM that this project had the "potential to contribute to significant impacts to $PM_{2.5}$." Letter from Martin to Palma at 4 of Detailed Comments. The BLM routinely prepares $PM_{2.5}$ analyses for oil and gas development in the Vernal Field Office; these analyses consistently show measurable, impactful increases in this pollutant. For example, one recent analysis which evaluated the development of only three wells—one being constructed, one being drilled, and one being completed—predicted that these three would increase the 24-hour average maximum $PM_{2.5}$ value by 3.6 $\mu g/m^3$ in the area of development. Tumbleweed II Exploratory Natural Gas Drilling Project at 73. Even if $PM_{2.5}$ levels were not already reaching levels well above the NAAQS limit of 35 $\mu g/m^3$, this value would be impactful and meaningful; it alone is ten percent of the federal air quality limit. *See* 40 C.F.R. § 50.13 (establishing limit of 35 $\mu g/m^3$). Given that $PM_{2.5}$ levels in the Uinta Basin are already well above the 35 $\mu g/m^3$ limit, this increase is quite meaningful as it further exacerbates poor air quality. *See supra* (discussing elevated $PM_{2.5}$ levels in the Uinta Basin).

Thus, proposed development on existing leases in the Uinta Basin is already likely to continue and to further exacerbate poor air quality. Oil and gas development in the Uinta Basin contributes measurable, impactful levels of ozone and $PM_{2.5}$ pollution. In light of the poor air quality in the Uinta Basin as a result of these two pollutants, those contributions are particularly damaging. These contributions have not been fully acknowledged and analyzed by the BLM in the Vernal and Price EAs.

The BLM Has Not Taken a Hard Look at the Adverse Effects of Oil and Gas Development on Air Quality; It Cannot Approve Development That Will Exceed Federal Air Quality Standards

BLM has not taken a hard look at how the potential development on these six lease parcels could impact air quality. This is a critical failure as ozone and $PM_{2.5}$ pollution are above federal standards in the Uinta Basin—where these six leases are located—and new development will likely only further exacerbate this problem. For this reason, BLM must take a hard look at impacts to air quality from potential development, since after a lease has been issued the agency will have made an irreversible and irretrievable commitment of resources that could only further violate federal air quality standards.

Parcels UT1112-15, UT1112-16, UT1112-19, UT1112-20 UT1112-25, and UT1112-42 are located in the Uinta Basin airshed.

The Vernal and Price EAs are contradictory in their air quality analysis and as a result, have not taken a hard look at the impacts of these potential leasing decisions on air quality. This oversight is remarkable. Both the Price EA and the Vernal EA acknowledge that oil and gas development is likely the main culprit behind elevated levels of ozone and $PM_{2.5}$ pollution. *See See* Price EA at § 3.3.1; Vernal EA at 10-11. The BLM further acknowledges that continued development will exceed federal and state air quality standards. *See* Price EA at § 4.3.1.1. The BLM also recognizes that the oil and gas development likely to flow from the leasing of these parcels will produce emissions that contribute to ozone and $PM_{2.5}$ pollution. *See id.* at §§ 3.3.1.1, 4.3.1.1; Vernal EA at 19-22. However, the Vernal EA and Price EA then suggest, at some points that these contributions to pollution levels will be "negligible" and that they are not likely to contribute to any violations of standards, or at the very least, will "only contribute a small amount" to future exceedances of air quality standards. *See* Vernal EA at 19-22; Price EA at §§ 3.3.1.1, 4.3.1.1. Regardless, the BLM then appears to commit to prepare dispersion modeling at the site-specific proposal stage before development will take place. *See* Vernal EA at 19-22; Price EA at § 4.3.1.1.

This internal inconsistency in the Vernal EA and Price EA must be eliminated and the BLM must perform this modeling analysis now, before it has issued these leases and before it has committed itself to development. Considering the poor air quality of the region, it is not clear that any development can take place without further exacerbating already poor air quality levels.

"[D]ispersion models … are mathematical approximations of the behavior of the atmosphere" and their results are "estimates of possible future concentrations and not exact predictions in time and space." Vernal RMP at 4-13. As BLM explained in its development of the Vernal RMP, which includes some dispersion modeling (though, not for ozone), those models "are the generally accepted methods available to predict potential air quality impacts for a NEPA-related analysis." Vernal RMP, Comments on the Draft RMP/EIS by Resource at 69.

Dispersion modeling is a preferred method for analyzing air quality impacts because it allows for quantification as well as the expression of data in the same format as the air quality standards. "Air quality in a given location is defined by pollution concentrations in the atmosphere and is generally expressed in units of parts per million (ppm) or micrograms per cubic meter ($\mu g/m^3$)."

Vernal RMP at 3-4; *see also* 40 C.F.R. §§ 40 C.F.R. 50.4 – 50.17 (containing NAAQS, which are expressed in ambient concentrations). Dispersion modeling is a mathematical approximation of the atmosphere, allowing the BLM to estimate how certain pollutants will concentrate or disperse once emitted. *See id.* at 4-13. Thus, modeling allows for descriptions of pollution concentrations that are similar to federal air quality standards, the benchmark that BLM should use to evaluate air quality impacts. *See* 43 U.S.C. § 1712(c)(8); 40 C.F.R. § 1502.2(d); 43 C.F.R. § 2920.7(b)(3).

BLM's Vernal and Price EAs claim that modeling at the prelease stage is not an accurate way to identify possible impacts. This explanation, however, conflicts with prior declarations by the BLM, with BLM's practice, with reasonably foreseeable development scenarios the agencies has constructed, and with guidance from the EPA.

In the Vernal RMP the BLM explained that dispersion modeling allowed the agency to estimate "possible future concentrations" and that modeling is a "method[] available to predict potential air quality impacts." Vernal RMP at 4-13, Comments on the Draft RMP/EIS by Resource at 69. In the resource management planning process for a neighboring field office, BLM recognized that modeling was required to assess ozone pollution from oil and gas development. BLM, Response to Public Comments, Comments on the [Moab] Draft EIS by Resource Type at 70 ("Predicting ozone associated with oil and gas development requires air dispersion modeling, which was not used in [the Moab RMP]."). The BLM's repeated use of dispersion modeling on various projects demonstrates that the agency does find it useful for estimating impacts and quantifying them. It also shows that such models may be prepared well before leasing.

The Vernal RMP made use of modeling for most pollutants, with the exception of ozone, and quantifies pollution levels. *See* Vernal RMP at 4-13 to -14. A recent nine-well project made use of modeling, with the exception of ozone, and it quantified impacts to pollution levels. *See* Tumbleweed II Exploratory Natural Gas Drilling Project at 73-74. Recently, the BLM has released to the public the Greater Natural Buttes Draft Environmental Impact Statement and the Gasco Energy Inc. Uinta Basin Natural Gas Development Project, Draft Environmental Impact Statement, both of which included dispersion modeling for ozone and $PM_{2.5}$. In addition, the EPA, the agency charged with protecting the nation's air quality and the technical expert in this realm, has continually indicated to BLM that modeling is useful and worthwhile. *See* 42 U.S.C. §§ 7403, 7408 (tasking the EPA with providing technical guidance for pollution control as well as with establishing national ambient air quality standards). For the Vernal RMP, EPA explained that without modeling, "it is difficult to determine accurately potential impacts from future development." Letter from Svoboda to Sierra at 2. In response to a resource management plan in the adjacent field office, the EPA stated, "the absence of detailed dispersion modeling does not provide for confidence that [NAAQS will be met] . . . . Ozone is of particular concern." Letter from Larry Svoboda, EPA, to Brent Northrup, BLM 1-2 (Sept. 12, 2008) (attached). The National Park Service has also confirmed, without conducting ozone modeling, BLM does not have the "information necessary to determine whether air quality standards could be violated." National Park Service Memorandum: Notice of December 19, 2008 Competitive Oil & Gas Lease Sale of Lands Proximal to Arches National Park, Canyonlands Park and Dinosaur National Monument 2 (Nov. 24, 2008) (attached as Ex. 14). These statements by BLM, EPA, the National

Park Service, as well as the BLM's own actions indicate that modeling is a useful and valuable tool, effective and predicting potential impacts.

Modeling is not without flaws. It is a means to estimate possibilities, not an "exact prediction[]." Vernal RMP at 4-13. It is a planning tool. "Dispersion modeling is generally conducted in a somewhat conservative manner, attempting to ensure that the final results do not underestimate the actual or future impacts, so that appropriate planning decisions can be made." Vernal RMP at 4-13. Without it, as the EPA explains, the BLM cannot assure the public that development will comply with air quality standards. *See supra*.

Even for wintertime ozone analysis modeling can be helpful, since current techniques generally cannot fully predict this phenomenon. *See* Letter from Martin to Palma at 3. As the EPA explained to BLM, "wintertime ozone issues should be addressed qualitatively in light of the significant predicted project impacts with the knowledge gained from the modeling, monitoring and potential mitigation scenarios." *Id.*

The BLM has already developed reasonably foreseeable development scenarios for how development might take place on leased parcels. *See* Price EA at § 4.2.1. These scenarios, which are used to project potential impacts to other resources, can easily be applied to air quality impacts analysis. BLM has not explained why such projections could not be applied to air quality development.

It is important to note that the Vernal RMP did not analyze the potential contributions to ozone pollution from oil and gas development. Trinity Consultants, Air Quality Assessment Report Vernal and Glenwood Springs Resource Management Plans 50 (Jan. 2006) (indicating that O_3—ozone—was not addressed in the technical air quality analysis prepared for the Vernal RMP) (excerpts attached);[5] *see also Southern Utah Wilderness Alliance v. Allred,* Civil Action No. 08-2187 (RMU), 2009 WL 765882, at *3 (D.D.C. Jan. 17, 2009) (finding that the Vernal RMP lacked ozone analysis). *It ignored the issue* altogether. *See, e.g.*, Vernal RMP, Comments on the Draft RMP/EIS by Resource at 3, 24, 29 (containing a statement by State of Utah that BLM's "air quality analysis does not include any information regarding the impact of the proposed alternative on ozone," and similar comments from the Division of Air Quality and EPA, which the BLM did not refute but only attempted to excuse). The Price RMP did not prepare any quantitative modeling—ozone or fine particulates—to analyze the impacts of oil and gas development to air quality.

To comply with NEPA's "hard look" requirement, BLM must explain how its actions will or will not comply with environmental laws and policies, such as NAAQS. *See* 40 C.F.R. § 1502.2(d). In fact, the Federal Land Policy and Management Act requires BLM to ensure that its approval of oil and gas development complies with all applicable air quality standards. 43 U.S.C. § 1712(c)(8) (requiring BLM to "provide for compliance with applicable pollution control laws, including State and Federal air … pollution standards"); 43 C.F.R. § 2920.7(b)(3) (requiring that BLM "land use authorizations shall contain terms and conditions which shall … [r]equire

[5]The Trinity Consultants' Air Quality Assessment Report is the technical support document regarding air quality of the Vernal RMP. Vernal RMP at 4-14.

compliance with *air … quality standards* established pursuant to applicable Federal or State law") (emphasis added). Accordingly, BLM must analyze air emissions associated with oil and gas development, and determine whether those emissions will result in violations of federal air quality standards.

Further, in analyzing the air quality impacts of its actions under NEPA, BLM must pay special attention to "[t]he degree to which the proposed action affects *public health or safety*." 40 C.F.R. § 1508.27(b)(2) (emphasis added). BLM's failure to analyze ozone pollution and the potential contributions from development of these six leases to those pollution levels are fatal and do not satisfy the agency's NEPA hard look requirement. The agency has neglected its duty to inform the public of whether it will comply with air quality standards and to discuss the potential public health impacts for a pollutant—ozone—that can lead to adverse health effects in humans such as decreased lung function and possible cardiovascular-related mortality and respiratory morbidity. *See, e.g.*, 40 C.F.R. § 50.15; 73 Fed. Reg. at 16,436; 72 Fed. Reg. at 37,883-95. Also, because the BLM's analysis here does not include information on elevated levels of $PM_{2.5}$ that have recently been recorded in the Uinta Basin, it has not satisfied its hard look obligations of discussing how impacts will—or in this case, will not—comply with federal air quality standards as well as the public health effects—like premature mortality and chronic respiratory disease—that can result from exposure to high $PM_{2.5}$, as is observed in the Uinta Basin. *See, e.g.*, 40 C.F.R. § 50.13; 71 Fed. Reg. 2627-28.

The Vernal and Price EAs acknowledge that air pollution levels will continue to exceed federal air quality standards and that this development will add to that pollution, even if such contributions are minor. The BLM may not permit this and therefore may not offer these seven leases.

BLM's proposed air quality pollution mitigation measures in the Vernal and Price EA will not eliminate emissions. Although they may reduce the amount of pollution contributed by development on these lease parcels, they will not eliminate such emissions. Since the air quality of the Uinta Basin is already exceeding federal air quality standards, new sources of pollution—reduced, though they may be—will only further exacerbate that problem.

The BLM attempts to rely on air quality analysis performed in various outside documents to consider air quality impacts here. However, this reliance is misplaced and does not satisfy BLM's NEPA or FLPMA obligations.

The BLM cannot now rely on the West Tavaputs Plateau Natural Gas Full Field Development Plan Environmental Impact Statement (2010) for analysis here (West Tavaputs EIS).[6] The West Tavaputs EIS did not evaluate or anticipate the high levels of wintertime ozone that are now being experienced in the Uinta Basin. *See* West Tavaputs EIS at 5-25 to -27. Furthermore, the West Tavaputs EIS predicted that development in this area would actually lead to exceedances of the federal air quality standards for ozone, setting aside the winter problems. *See id.*; *see also* Price EA at 75 (acknowledging predicted levels of ozone above the federal air quality standards).

[6] *Available at* http://www.blm.gov/ut/st/em/fo/price/energy/Oil_Gas/wtp_eis.

The West Tavaputs EIS also did not consider the impacts of development in this area on elevated wintertime levels of $PM_{2.5}$, particularly in urban areas of the Uinta Basin. *See* West Tavaputs EIS at 4-26 (lacking analysis of impacts to wintertime levels of fine particulates). Even if the BLM asserts that fine particulates are not an issue in the less-developed portions of the Uinta Basin, it does acknowledge that fine particulates are a problem in the developed areas and that part of this problem comes from oil and gas development. It cannot ignore, therefore, the contributions of development on these levels, as it has done. The West Tavaputs EIS does not analyze the contributions of oil and gas development in this area on NO_2 pollution levels. *See id.* at 4-15 to -16. Finally, the West Tavaputs EIS acknowledges that development in this area will adversely affect visibility in national parks, something that BLM cannot do. *See id.* at 5-22. For these reasons the BLM cannot rely on the West Tavaputs EIS for air quality analysis.

The BLM may not rely on the Uinta Basin Air Quality Study (UBAQS) either. This study, which only modeled to up to year 2012, is deeply flawed, not a public document, and actually predicts ozone exceedances. It was prepared by the oil and gas industry trade group formerly known as the Independent Petroleum Association of Mountain States, as opposed to the BLM. First, UBAQS predicts that oil and gas development in the Uinta Basin will actually lead to ozone exceedances (outside of the wintertime exceedances, which it ignored). *See, e.g.*, Price EA at 75; Environ, Uinta Basin Air Quality Study (UBAQS) TS-10, TS-28, TS-29 (June 30, 2009) (excerpts attached as Ex. 3 of Letter from Garbett to Stiewig) (showing exceedances in the Vernal Field Office area based on 2006 meteorological data). Second, UBAQS does not include new monitored data from the winter 2010 ozone monitors in the Uinta Basin. Third, the EPA has raised significant issues with UBAQS, demonstrating that it is not adequate analysis. *See* Letter from Larry Svoboda, EPA, to Bill Stringer, BLM (Oct. 16, 2009) (attached as Ex. 2 of Letter from Garbett to Stiewig).[7] Fourth, the Uinta Basin has also experienced several exceedances of NAAQS for fine particulates recorded during the winters of 2007 through 2009; UBAQS did not make use of this monitored data. *See* Letter from Garbett to Stiewig at 3-4, Exs. 4-5.

Neither UBAQS nor the West Tavaputs EIS evaluate how development in these areas will related to the proposed revisions to the ozone NAAQS.

Finally, neither the Greater Natural Buttes nor the Gasco air quality studies may be relied on by the BLM here; both documents overlook wintertime ozone issues, and they ignore contributions of oil and gas development to fine particulates in the urban Uinta Basin. The Gasco air quality study has been extensively criticized by the EPA. *See* Letter from Martin to Palma. In fact, the EPA gave the Gasco draft environmental impact statement its lowest possible rating for an environmental analysis, thereby indicating the extent of its inadequacies. *See id.* BLM cannot rely on these analyses now. SUWA incorporates the criticisms of the EPA to both of these documents. Neither the Gasco nor the Greater Natural Buttes analysis considered the full reasonably foreseeable development scenarios for the Uinta Basin that the BLM released in 2012. Since they significantly undercount the number of potential wells—and therefore the potential pollution—they cannot be relied on here.

[7]SUWA incorporates the criticisms of the EPA regarding that analysis here.

In summary, the BLM has not fully analyzed the impacts that would likely flow from its decision to lease the parcels proposed for the November 2012 oil and gas lease sale. The contradictory statements found in the Price and Vernal EA undercut any potential effectiveness in this analysis. Development on these six parcels will further contribute to poor air quality in the region. BLM cannot authorize activities that will contribute to federal air quality exceedances and it cannot, therefore, offer these parcels since they will add to these pollution levels.

BLM Failed to Take a Hard Look at the Impacts of Its Decision on Climate

The BLM did not consider the effects of its decision to issue these seven leases on climate change or how climate change will impact the resources related to the development of these seven leases. The EPA has pointed out the inadequacies of BLM's analysis and the BLM itself has now begun preparing some climate change analysis in other documents, demonstrating that this may be done. Unfortunately, the BLM's protest decision merely attempts to explain its refusal to conduct this analysis at the lease sale stage, the point of an irreversible and irretrievable commitment of resources.

The best scientific evidence available shows that climate change is a real and compelling threat to public lands. *Massachusetts v. EPA*, 127 S. Ct. 1438, 1455 (2007). In Secretarial Order 3289, Secretary Salazar stated that BLM "must consider and analyze potential climate change impacts when undertaking long-range planning exercises" and also made clear that the requirements in Secretarial Order No. 3226 remain in effect. Order 3226, issued by then-Interior Secretary Bruce Babbitt, requires BLM to "consider and analyze potential climate change impacts" when undertaking long-range planning exercises, including specifically "management plans and activities developed for public lands." These Orders are enforceable and demand BLM's compliance. The issuance of these six leases and the potential oil and gas development that would ensue constitute the sort of activity on public lands where BLM must consider climate change. Whether this analysis should have taken place at the resource planning stage or the lease issuance stage, BLM's actions here appear more reflective of an attempt to avoid this analysis by pushing it off to some other phase (which phase never comes).

Under NEPA, BLM must adequately and accurately describe the environment that will be affected by the proposed action—the "affected environment." 40 C.F.R. § 1502.15. This includes the affected environment as modified by climate change. BLM did not adequately conduct any analysis of the effects of climate change in the Vernal RMP nor did the agency consider the greenhouse gas contributions of reasonably foreseeable oil and gas development originating in these six lease parcels. In the Vernal RMP, BLM claimed that it could not analyze the impacts of climate change due to lack of tools for quantification, including a lack of guidance from EPA. *See, e.g.* Vernal RMP at 4-8; Director's Protest Resolution Report for Vernal RMP at 49-50 (Oct. 29, 2008). The same goes for the Price RMP. However, EPA rejected that precise argument in its comments on the Vernal RMP, stating that "NEPA requires federal agencies to take a hard look at potential environmental impacts associated with their proposed actions" and the "[l]ack of regulatory protocol or emission standards for greenhouse gases does not preclude BLM from fulfilling this responsibility." Letter from Svoboda to Sierra at 4-5.

The BLM attempts to waive away these issues by asserting that it is too soon to address the issue of climate change. *See* Vernal EA at 30; Price EA at § 4.3.3.1. However, such an argument

ignores the fact that this analysis must take place at the point of irreversible and irretrievable commitment. *See supra* (citing *Southern Utah Wilderness Alliance*, 159 IBLA at 240-43; *Friends of the Southeast's Future*, 153 F.3d at 1063; *Pennaco Energy, Inc.*, 377 F.3d at 1159-61; *Union Oil Co.*, 102 IBLA at 189; *Conner*, 848 F.2d at 1448-51; *Peterson*, 717 F.2d at 1414). These six oil and gas leases do not prohibit all surface use and therefore constitute an "irreversible and irretrievable commitment of resources." *See supra; Peterson*, 717 F.2d at 1414. This argument also ignores the conclusion of the EPA that the Vernal and Price RMPs do not adequately analyze greenhouse gas emissions from oil and gas development and that an "[a]nalysis of greenhouse gas emissions will still be needed for future NEPA compliance regarding the approval of oil and gas operation in the Vernal planning area." Letter from Svoboda to Sierra at 4. The same goes for the Price planning area.

This oversight and obfuscation by BLM is significant. As the agency explains elsewhere, the Council on Environmental Quality released draft guidance for how NEPA analyses should consider and evaluate greenhouse gas emissions as well as climate change. Gasco Uinta Basin Project at 3-11. "Specifically, where a proposed action is anticipated to cause direct, annual emissions of 25,000 metric tons or more of CO2-equivalent greenhouse gas emissions, a quantitative and qualitative assessment is required together with the consideration of mitigation measures and reasonable alternatives to reduce greenhouse gas emissions." *Id.* BLM has recently evaluated a one hundred-well-per-year development in the Vernal Field Office that would result in over 63,870 tons per year of carbon dioxide, a greenhouse gas. *See id.* at 4-6. The Council on Environmental Quality has already provided guidance on how quantitative and qualitative analysis of these impacts can take place and that such analysis should consider mitigation measures. *See* Memo. from Nancy H. Sutley, Council on Environmental Quality, Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (Feb. 18, 2010), http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf. The EPA has also provided BLM with specific examples of how this analysis should proceed. *See* Letter from Martin to Palma, Detailed Comments at 5-7. Thus, BLM has at its disposal guidance regarding climate change analysis and that guidance suggests that these six leases could facilitate development exceeding a significance threshold. BLM's lack of analysis constitutes a failure to take a hard look at the impacts of its decision on climate change.

The Price and Vernal EAs also fail to consider the pressing issue of disturbed desert dust being deposited on nearby mountain snowpack, in turn leading to early snowmelt and increased regional temperatures, which is directly related to the larger phenomenon of climate change. *See, e.g.*, Thomas H. Painter *et al.*, *Impact of Disturbed Desert Soils on Duration of Mountain Snow Cover*, Geophysical Research Letters, Vol. 24, L12502 (June 23, 2007), *available at* http://wwa.colorado.edu/admin/announcement_files/1649-uploaded/announcement-1649-4670.pdf; J.C. Neff *et al.*, *Increasing Eolian Dust Deposition in the Western United States Linked to Human Activity*, Nature Geoscience (Advanced Online Publication – February 24, 2008), *available at* http://esp.cr.usgs.gov/people/reynolds_pdfs/Neff_et_al_dust_deposition_Nature_Geosci_2008.pdf; SUWA, Dust from BLM Lands in Utah Melting Snow in Colorado, http://action.suwa.org/site/DocServer/DustonSnow_FactSheet.pdf?docID=9421. The BLM

should analyze the impacts of all the surface disturbing activities that would be permitted in the leasing of the parcels offered in the November 2012 lease sale along with the potential impacts of ongoing and reasonably-foreseeable activities in the Vernal and Price planning areas on the phenomenon of dust melting snow. In addition to qualitative analysis, the BLM can at least quantify total suspended particulates that are likely to be generated by wind erosion on the disturbed surfaces described above; this is something BLM already knows how to do and has employed in some projects. *See* West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft Environmental Impact Statement UT-070-05-055, at App. J, Figure 4.

Stiles Report

Lease parcels 15, 16, 19 and 20 were previously proposed for offering by the BLM in the December 2008 oil and gas lease sale. These parcels were deferred from that lease sale; however, a number of adjacent parcels were offered. These adjacent parcels were later withdrawn after a federal court issued a temporary restraining order and the Secretary of the Interior then determined that the parcels were being offered with inadequate, flawed analysis. Subsequently, the BLM sent a team of agency staff to investigate these parcels; this investigation was compiled into a report known as the "Stiles Report."

The Stiles Report specifically recommended that these adjacent lease parcels (which, for example were recently offered as UT1111-17, UT1111-18, UT1111-19, UT1111-20, and UT1111-22 (or their precursors)) be deferred from reoffering until a number of analyses could be conducted and conditions met. Stiles Report at 8-9. Although this report was directed at adjacent parcels, the analysis and critique applies equally well to these five parcels. The BLM has not met the conditions and the analyses have not been performed requested in the Stiles Report, therefore the BLM should remove these parcels from the November 2012 sale list.

The Stiles Report indicated that the air quality analysis needed for the leasing of these parcels was lacking. *See* Stiles Report at 9. As described above, the air quality analysis for these five parcels is still deficient and the BLM should not offer them for lease. *See supra*. Furthermore, the Stiles Report indicated that leasing of this area at this time was not needed to ensure the orderly development of minerals. Stiles Report at 9. It recommended that BLM wait until significant oil and gas development had commenced in the immediate area before it might be appropriate to lease these parcels. *Id.* The Price EA does not explain what development has taken place in the immediate vicinity of these five parcels that would now make leasing appropriate.

Lands with Wilderness Characteristics

Parcels 13, 15, 25, and 42 are all located inside of or partially overlap areas identified by the BLM as containing wilderness characteristics. Secretarial Order 3310 indicates that it is the policy of the Department of the Interior to avoid impairment of lands inventoried to have wilderness characteristics. *See* Secretarial Order 3310 (Dec. 22, 2010), *available at* http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=115974. Although Congress has indicated that funds are not available for implementing this order, the Order has not been revoked and the Interior Department's policy remains unchanged. *See* Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-010,

§ 1769 (stating that "For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010."). On June 1, the Secretary of the Interior responded to this legislation stating that "the BLM will not designate any lands as 'Wild Lands.'" Memo. from Ken Salazar, Sec'y of the Interior, to Bob Abbey, BLM (June 1, 2011), *available at* http://www.doi.gov/news/pressreleases/upload/Salazar-Wilderness-Memo-Final.pdf. Thus, the Secretary did not end Department's policy to avoid impairment of wilderness character lands. The BLM should not offer leases 13, 15, 25, or 42 because it would be contrary to the policy of Secretarial Order 3310. Following this policy would require no expenditure of money here and it would not entail the designation of Wild Lands, therefore it does not run afoul of the spending limitations or the Secretary's June 1 memo. This is entirely consistent with BLM's authority to manage and protect wilderness characteristics under FLPMA and BLM's Land Use Planning Handbook. *See* 43 U.S.C. § 1702(c); H-1601-1, App. C at 12-13.

Furthermore, the Secretary of the Interior's June 1, 2011, memorandum affirms BLM's obligation to inventory and "consider" wilderness characteristics "when making project-level decisions." Salazar Memo. at 1; *see also Ore. Natural Desert Ass'n v. BLM,* 531 F.3d 1114, 1119 (9th Cir. 2008) (recognizing BLM's duty to maintain and use current inventory of lands with wilderness characteristics when making management decisions). Here, BLM has already determined that these four parcels contain wilderness characteristics. Consequently, it must now fully "consider" those characteristics while planning for the November lease sale. The Vernal and Price EAs do not fully consider these impacts.

In order to fully "consider" wilderness characteristics in the context of this lease sale, the Secretary's Memorandum requires the BLM to develop and evaluate a leasing alternative that fully protects lands with wilderness characteristics, either through parcel deferrals or NSO stipulations. Such an alternative would comply with a key provision of IM 2010-117, which requires BLM to evaluate lease sale alternatives that "address unresolved resource conflicts." In response to this requirement of the IM, BLM has consistently included alternatives in lease sale EAs that protect wilderness characteristics, even in lease sale EAs that post-date the congressional funding limitation on implementing the Wild Lands Policy. For example, in Colorado the proposed action for the White River Field Office's August 2011 Oil and Gas Lease Sale EA, BLM deferred five parcels in order to update its wilderness inventory and protect "primitive recreation opportunities."[8] BLM should follow suit for the November 2012 lease sale and evaluate an alternative that protects the wilderness characteristics of the preliminary sale parcels.

BLM Must Comply with the Requirements of IM 2010-117

In addition to directing BLM to fully analyze an alternative that would protect wilderness characteristics, *see supra*, IM 2010-117 directs BLM to "take into account" several "other

[8]White River EA at 45, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2011/august_2011.Par.43286.File.dat/Sale%20Notice%20EAs.zip.

considerations" during its evaluation of lease sale parcels, including (1) whether non-mineral resource values outweigh mineral development values in "undeveloped areas;" and (2) whether leasing will cause "unacceptable impacts" on units of the National Park System. Because several of the sale parcels are located in "undeveloped areas" and/or are likely to have impacts on visibility in national parks, BLM must evaluate both of these considerations in the EA. In doing so, the BLM should follow the example of Wyoming's High Desert District Office, which recently included a separate discussion for the IM's "other considerations" in a lease sale EA.[9]

When evaluating lease parcels, BLM should determine whether "non-mineral resource values are greater than potential mineral development values" in "undeveloped areas." The seven parcels at issue here, are located in undeveloped areas. Because these areas also have considerable "non-mineral resource values," such as inventoried wilderness characteristics, important recreation and scenic values, and cultural resource values, the BLM must evaluate and determine whether they are outweighed by potential mineral development values. The BLM has not performed this weighing. This determination "is a policy decision that is not dependent upon the economic values that may be assigned to competing resources." IM 2010-117, n.ix; *see also* 43 U.S.C. § 1702(c) (requiring BLM to give "consideration . . . to the relative values of the resources [of the public lands] and not necessarily to the combination of uses that will give the greatest economic return").

Visual Resource Inventory

The Vernal and Price field offices did not update their visual resource inventory as part of the 2008 Vernal or Price RMPs, respectively. The BLM has been updating visual resource inventories for the field offices across the state, including the lands covered by these seven parcels. This updated information should be included in determining whether existing visual resource management classes are correct and oil and gas leasing stipulations are adequate to protect visual resources. In the face of this new information, BLM may be required to defer leasing until it prepares a land use plan amendment to consider significant new information changing VRM categories. *See* 43 C.F.R. § 1610.5-5; *see also* BLM Handbook H1601-1 at 45 (Section VII.A) ("Plan amendments are most often prompted by the need to . . . consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions.").

Areas of Critical Environmental Concern (ACECs)

Parcels 15, 16, 19, and 20 overlap with the Nine Mile Canyon ACEC. The BLM has not evaluated the potential impacts to this ACEC from development on these parcels. The Price EA incorrectly assumes that no surface occupancy (NSO) stipulations would prevent development on the portions of these parcels that overlap with the ACEC and suggests that these stipulations have no exceptions, waivers, or modifications. However, that is not correct. As the Price EA itself later discloses, that NSO stipulation is subject to an exception. Price EA at App. A. The Price EA must evaluate how potential development granted through this exception would impact

[9]*See* November 2011 Lease Parcels EA at 103-05, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/1111.Par.46894.File.dat/ea.pdf.

the Nine Mile Canyon ACEC and its relevant and important values. Similarly, the Vernal EA erroneously assumes that impacts would be limited to a twenty acre portion of the parcel. Like the Price EA, the Vernal EA has not evaluated how these impacts might expand if the future operator were granted an exception and development took place on the lease outside the twenty acre area of impact.

Leasing and development on these four parcels would not protect the relevant and important values of the Nine Mile Canyon ACEC and these parcels should therefore be deferred.

Parcel 42 is located in the Red Creek Watershed ACEC. The Vernal EA makes clear that this parcel should not be leased. If leasing were to take place on this parcel it could possibly lead to some development and impacts on the parcel. Those impacts would lead to increased erosion and water contamination, according to the Vernal EA. The Red Creek Watershed ACEC was designated precisely to prevent this sort of activity, its relevant and important value being its watershed. New erosion from development on this parcel would adversely impact the watershed and should not be allowed. The BLM must defer parcel 42 for this reason.

Special Recreation Management Area (SRMA)

The BLM has completely failed to analyze the potential impacts leasing of parcels 15, 16, and 19 on the Nine Mile Canyon Special Recreation Management Area (SRMA). Oil and gas development on these parcels—which is possible due to the exception to the NSO stipulations for each parcel—would be incompatible with recreation managment here.

Wilderness Character Inventory

The BLM must evaluate the wilderness characteristics of the entirety of parcel 25. Portions of this parcel were determined by the BLM in the Vernal RMP not to contain wilderness characteristics. However, the BLM has recently issued a new wilderness character inventory manual (Manual 6310) which contains new guidance not considered by the Vernal Field Office. The BLM must defer parcel 25 until such time it is able to perform a wilderness character inventory for the entire parcel. SUWA will provide BLM with documentation of this area's wildereness character beyond the current boundaries with wilderness characteristics that the BLM has identified.

Sincerely,

/s/ David Garbett

David Garbett
Staff Attorney